



New administrative guidelines

September 2021

Agenda

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2	New administrative guidelines
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4	What will change?
5	Questions

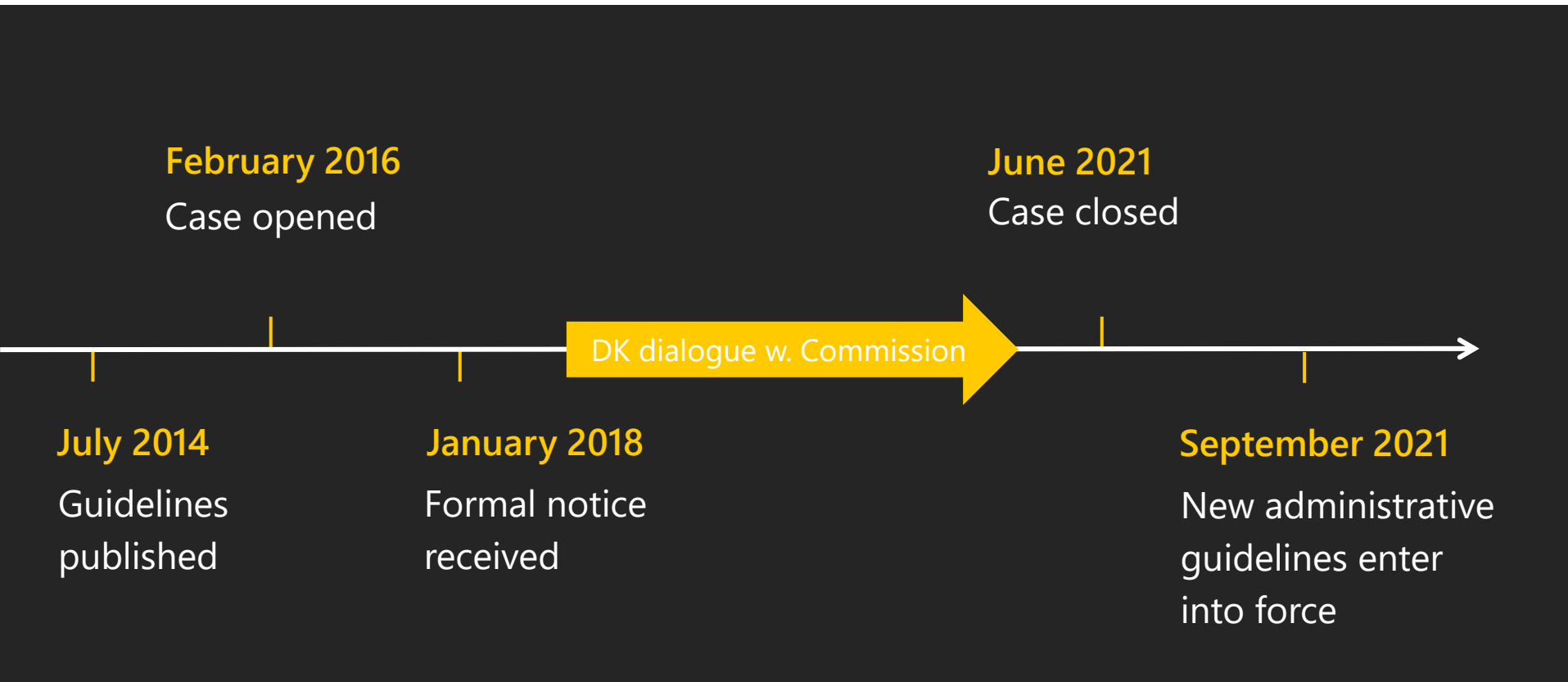
Article 346 TFEU



“any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes”

TFEU, Article 346

Timeline: Dialogue with European Commission



New National Defence Industrial Strategy

- The new strategy outlines the framework conditions, national security interests and future goals for the Danish defence industry:

"The Danish defence industry is essential for Denmark's national security".

"The Government will maintain and develop industrial competencies and capabilities within areas of significant importance for Denmark's national security interests".

- The strategy defines 7 action areas, including *targeted industrial support and co-operation*.



Guidelines for the development and maintenance of defence industrial competences and capabilities when acquiring defence equipment and defence services

The 2021 administrative guidelines:

- Consist of three parts
 - Guidelines for the development and maintenance of defence industrial competencies and capabilities when acquiring defence equipment and defence services
 - Annex 1 on the assessment of competition
 - Annex 2 on the administration of industrial co-operation
- Enter into force on 9 September 2021.
- Will be used when the Danish Business Authority and the Danish Ministry of Defence complete an assessment of the required measures for the protection of Denmark's essential security interests in relation to a specific acquisition of defence material after the guidelines enter into force.



| What will stay the same?

Existing contracts

- Existing industrial co-operation contracts between the Danish Business Authority and foreign suppliers continue unaffected. This includes signed industrial co-operation contracts awaiting activation and existing calls for tender.
- Existing and planned co-operation with Danish companies under existing contracts can thus continue unaffected.
- For all issues that are not specifically regulated in existing contracts, the Danish Business Authority will administer in accordance with the 2021 guidelines whenever relevant.

New contracts

- For all new acquisitions with an obligation for industrial co-operation, it will be made explicit in the tender material from DALO, which guidelines are applicable for the acquisition in question.
- The DBA will be administering contracts under three different sets of guidelines:

ICCs signed
before
July 2014

2014
guidelines

2021
guidelines

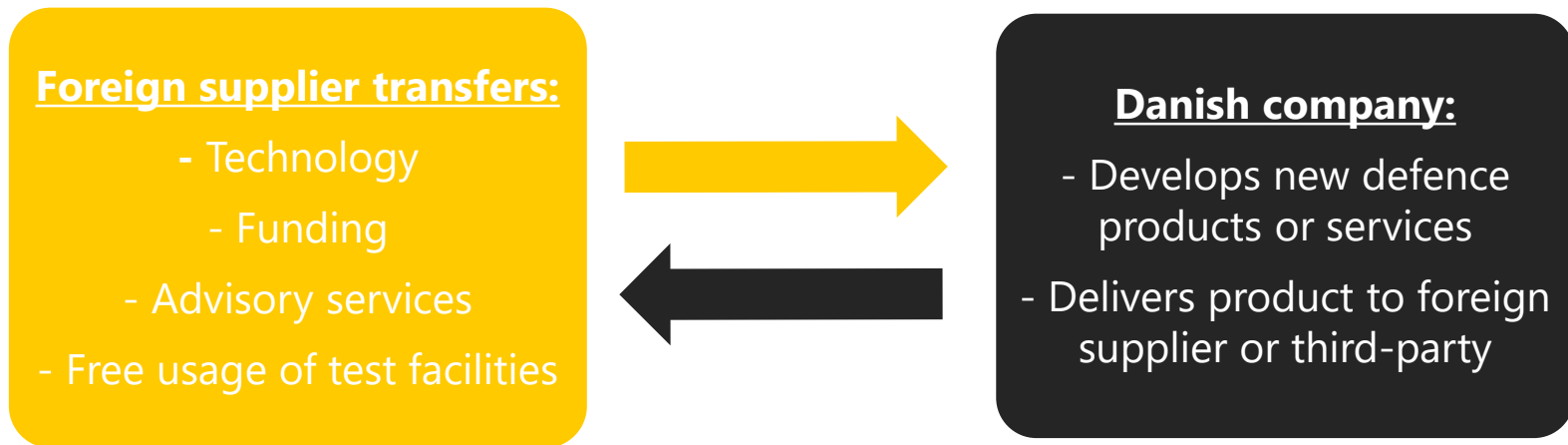
Industrial co-operation I

- For acquisitions where it is decided that an obligation for industrial co-operation is the necessary and most proportionate measure for the protection of essential Danish security interests, the setup around industrial co-operation remains the same:
- The supplier enters an Industrial Co-operation Contract (ICC) with the DBA.
- The supplier (or eligible party) can fulfil their obligation through
 - Direct procurement from the Danish defence industry and/or
 - development projects with Danish companies.
- The fulfilment has to concern defence material and/or services and has to be related to the specific acquisition.
- Industrial co-operation can be conducted with any Danish company that operates or wishes to operate on the defence market.



Industrial co-operation II

- Application for pre-approval of development projects using DBA template:



- Possible multipliers in development projects:
 - Technology transfer: Maximum 7
 - Funding: Maximum 5
 - Advisory services: Maximum 5
 - Making facilities available: Maximum 3
- Follow-on sales and direct procurement are credited 1:1.



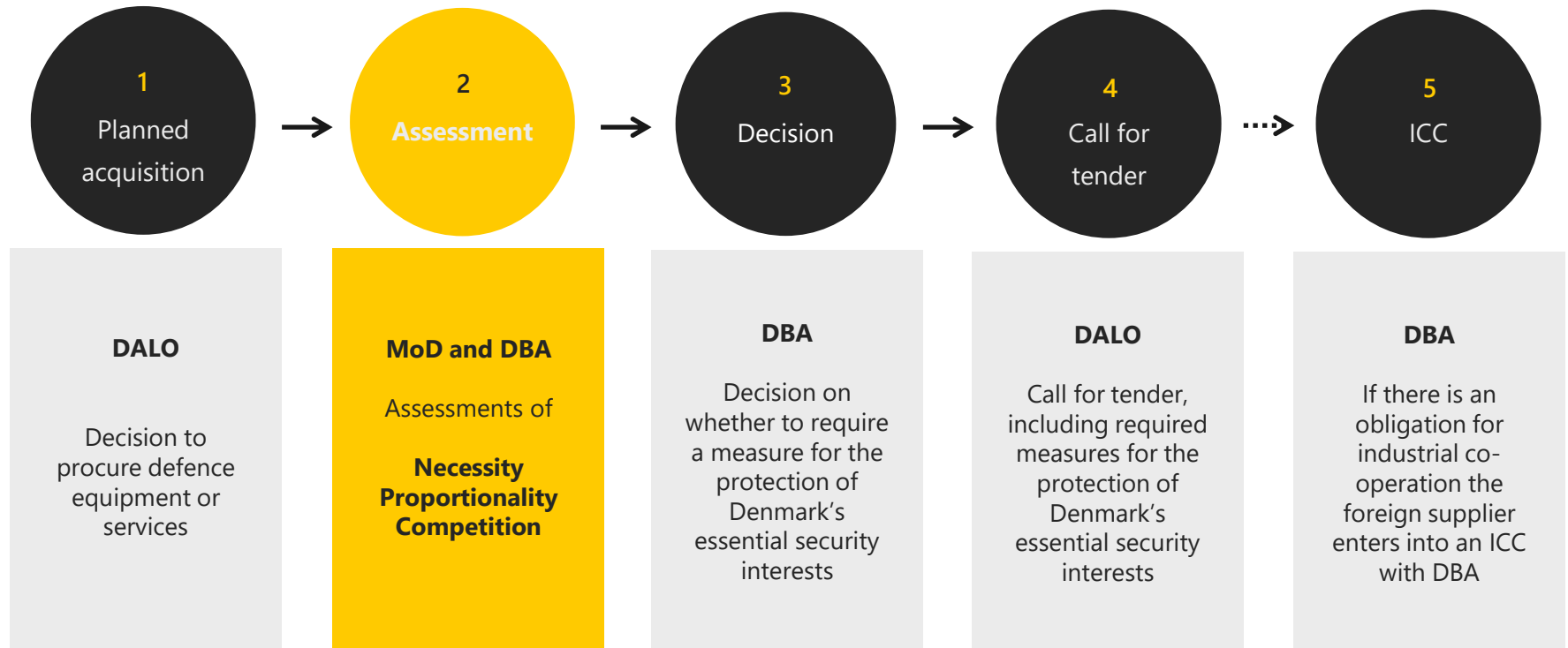
| What will change?

Primary changes

1	Decision-making process
2	Assessment of necessity and the scope of fulfilment of the ICC
3	Assessment of proportionality
4	Assessments of competition
5	Valuation of technology and follow-on sales

DBA & MoD decision-making process

- The overarching process for deciding whether to require a measure for the protection of Denmark's essential security interests mirrors the decision-making process of the 2014 guidelines:



Assessment of necessity and domain of the acquisition

- MoD carries out the assessment of necessity.
 - MoD specifies Denmark's essential national security interest(s).
 - MoD determines the domain of the acquisition based on:
 1. Critical function(s)
 2. Life cycle phase(s)
- Domain of the acquisition: Competences and capabilities within the defence industry that must be developed and maintained in Denmark to protect the specific essential national security interests.
- MoD decides the necessity of taking measures to ensure a defence industrial effect in Denmark.

Fulfilment: Domain of the acquisition

Effect on industrial
co-operation

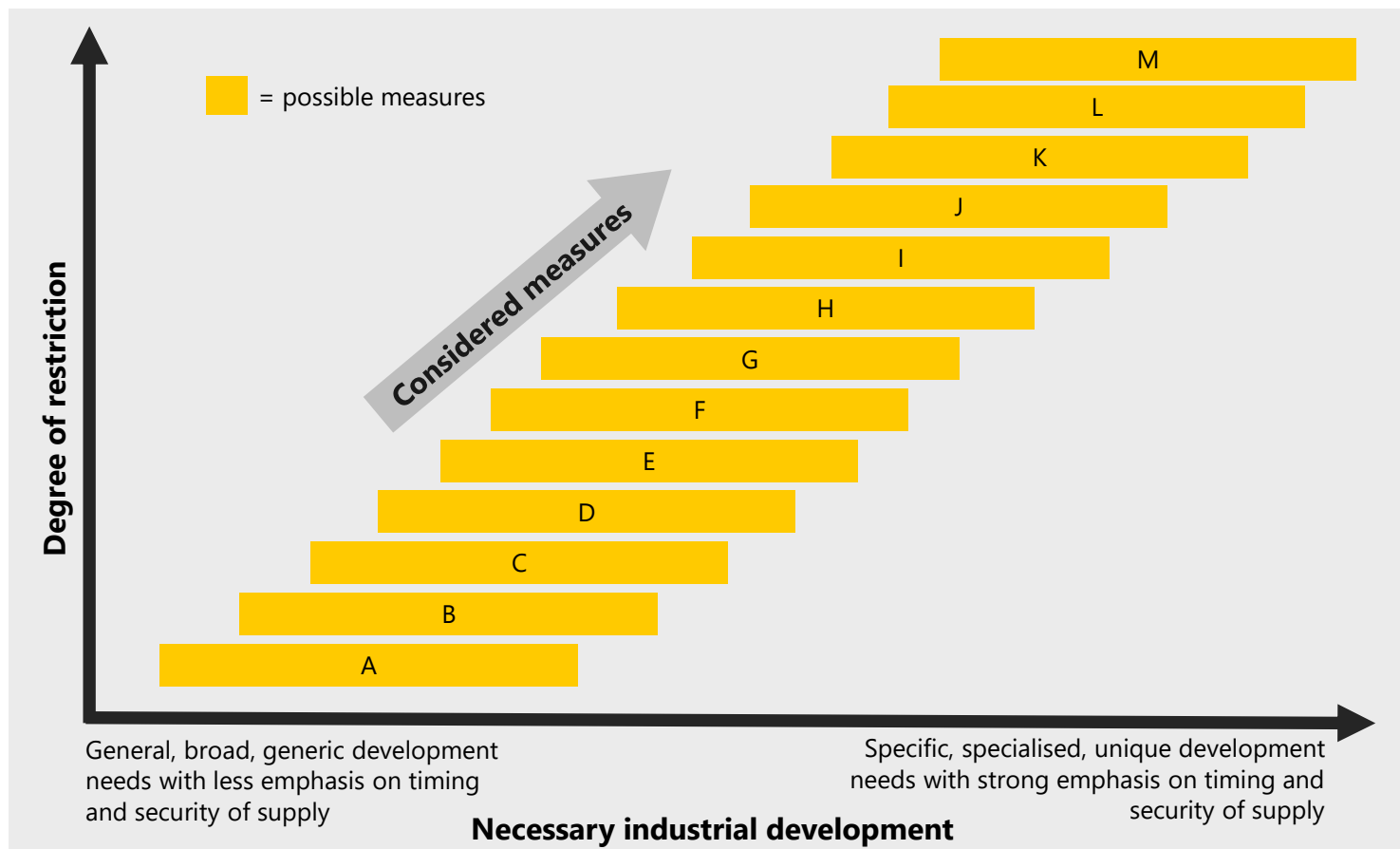
- If there is an obligation for industrial co-operation, then the fulfilment must occur within the domain of the acquisition defined by the Ministry of Defence in the assessment of necessity:



- The domain of the acquisition will identify the competences and capabilities that ought to be developed in Danish defence industry to support the critical function(s) and life cycle phase(s) identified in relation to the specific acquisition.

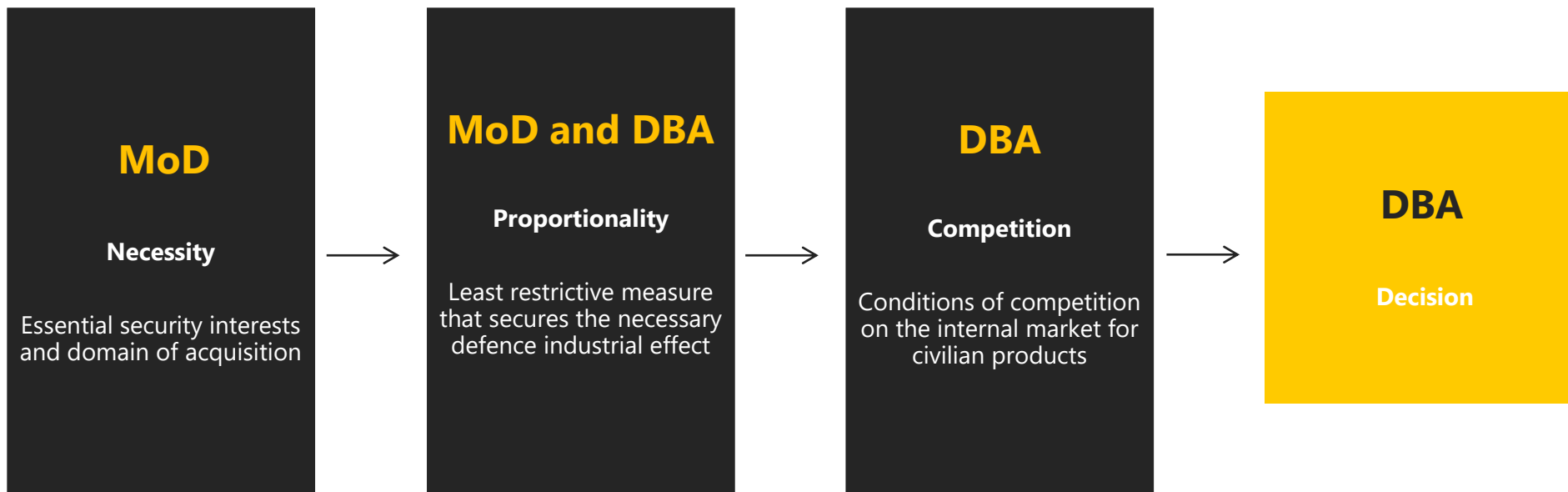
Assessment of proportionality

- MoD and DBA determine the least restrictive measure, which can secure the necessary defence industrial effect in Denmark:



Assessment of competition and decision

- The Danish Business Authority conducts an assessment of competition of the measure that was decided in the assessment of proportionality. The administrative guidelines introduce an extended method for this assessment.
- The Danish Business Authority decides if the acquisition requires a measure for the protection of Danish essential security interests, e.g., industrial co-operation.



Fulfilment: Assessment of competition

Effect on industrial
co-operation

- For all new ICCs under the 2021 administrative guidelines, the DBA will conduct assessments of competition for the fulfilment of the obligation based on the DBA's screening models.
- The assessments will estimate the risk that the fulfilment can result in an unproportionate spill over effect into the Danish company's civilian business area.
- All applications for the pre-approval of a development project must pass this initial assessment before they can be processed at the DBA.
- Hence, in some cases, Danish companies will have to report additional information to the DBA in the application process. This can include:
 1. Civilian/military percentage of turnover;
 2. Estimated profit rate in the project;
 3. Civilian product portfolio;
 4. Turnover of certain civilian products.

New method for the valuation of technology in development projects

Effect on industrial co-operation

- In the 2021 administrative guidelines the DBA introduces a new method for the valuation of technology transfers in development projects in order to ensure:
 - More equal treatment between suppliers.
 - More transparency in the administration of development projects.
- The new standardised method is based on established accountancy practice: The “Relief from royalty” method.
- Follow-on sales have a larger influence on the project:

	2014 Guidelines	2021 Guidelines
Follow-on sales	3-year limit	10-year limit
Milestone bonus	50 % Only sales to supplier	100 % Sales to supplier + third parties

Administrative updates

Effect on industrial
co-operation

- Established practices for the release of credit continue:
 - When relevant the Danish Business Authority can make the release of credit for a technology transfer contingent on realising set targets in the development project.
 - When relevant the DBA can require time sheets for advisory services.

Summary

- Existing contracts can continue unaffected.
- Industrial co-operation remains a central tool for developing and maintaining defence industrial competencies in Denmark.
- Development projects and multipliers remain.

- Main consequences for industrial co-operation practice:
 - Fulfilment within the domain of the acquisition.
 - Assessment of competition regarding the fulfilment.
 - New method for the valuation of technology transfers.



Additional information

- The DBA's website is updated regularly.
- Here you will find:
 - The administrative guidelines of 2014 and 2021
 - Q&A
 - Examples of ICCs
 - Contact information for the defence industry team at the DBA.
- The DBA is available for any questions you may have regarding the 2021 guidelines and the implications for your existing ICCs.
- Please reach out to your usual POC with any questions you may have.